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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## LOK SABHA

The following Bill was introduced in Lok Sabha on 12th December, 2014:—

BILL NO. 185 OF 2014

*A Bill to amend the Companies Act, 2013.*

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

Short title and commencement.

**1.** (*1*) This Act may be called the Companies (Amendment) Act, 2014.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2.

18 of 2013.

**2.** In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—

(*i*) in clause (*68*), the words "of one lakh rupees or such higher paid-up share capital" shall be omitted;

(*ii*) in clause (*71*), in sub-clause (*b*), the words "of five lakh rupees or such higher paid-up capital," shall be omitted.

Amendment of section 9.

**3.** In section 9 of the principal Act, the words "and a common seal" shall be omitted.

Amendment of section 11.

**4.** In section 11 of the principal Act, in sub-section (*1*), in clause (*a*), the words "and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company" shall be omitted.

Amendment of section 12.

**5.** In section 12 of the principal Act, in sub-section (*3*), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) have its name engraved in legible characters on its seal, if any;".

Amendment of section 22.

**6.** In section 22 of the principal Act,—

(*i*) in sub-section (*2*),—

(*a*) for the words "under its common seal", the words "under its common seal, if any," shall be substituted;

(*b*) the following proviso shall be inserted, namely:—

"Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.";

(*ii*) in sub-section (*3*), the words ''and have the effect as if it were made under its common seal" shall be omitted.

Amendment of section 46.

**7.** In section 46 of the principal Act, in sub-section (*1*), for the words "issued under the common seal of the company", the words "issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary" shall be substituted.

Insertion of new section 76A.

**8.** After section 76 of the principal Act, the following section shall be inserted, namely:—

Punishment for contravention of section 73 or section 76.

"76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—

(*a*) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and

(*b*) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.".

Amendment of section 117.

**9.** In section 117 of the principal Act, in sub-section (*3*),—

(*i*) in clause (*g*), the word ''and'' occuring at the end shall be omitted;

(*ii*) after clause (*g*), the following proviso shall be inserted, namely:—

"Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and".

Amendment of section 123.

**10.** In section 123 of the principal Act, in sub-section (*1*), after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.".

Amendment of section 124.

**11.** In section 124 of the principal Act, in sub-section (*6*),—

(*i*) for the words, brackets and figure "unpaid or unclaimed dividend has been transferred under sub-section (*5*) shall also be", the words "dividend has not been paid or claimed for seven consecutive years or more shall be" shall be substituted;

(*ii*) after the proviso, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.''.

Amendment of section 134.

**12.** In section 134 of the principal Act, in sub-section (*3*), after clause (*c*), the following clause shall be inserted, namely:—

"(*ca*) details in respect of frauds reported by auditors under sub-section (*12*) of section 143 other than those which are reportable to the Central Government;".

Amendment of section 143.

**13.** In section 143 of the principal Act, for sub-section (*12*), the following sub-section shall be substituted, namely:—

"(*12*) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.".

Amendment of section 177.

**14.** In section 177 of the principal Act, in sub-section (*4*), in clause (*iv*), the following proviso shall be inserted, namely:—

"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;".

Amendment of section 185.

**15.** In section 185 of the principal Act, in sub-section (*1*), in the proviso, after clause (*b*), the following clauses and proviso shall be inserted, namely:—

"(*c*) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(*d*) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (*c*) and (*d*) are utilised by the subsidiary company for its principal business activities.".

Amendment of section 188.

**16.** In section 188 of the principal Act,

(*a*) in sub-section (*1*),—

(*i*) for the words "special resolution", at both the places where they occur, the word "resolution" shall be substituted;

(*ii*) after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.";

(*b*) in sub-section (*3*), for the words "special resolution", the word "resolution" shall be substituted.

Amendment of section 212.

**17.** In section 212 of the principal Act, in sub-section (*6*), for the words, brackets and figures "the offences covered under sub-sections (*5*) and (*6*) of section 7, section 34, section 36, sub-section (*1*) of section 38, sub-section (*5*) of section 46, sub-section (*7*) of section 56, sub-section (*10*) of section 66, sub-section (*5*) of section 140, sub-section (*4*) of section 206, section 213, section 229, sub-section (*1*) of section 251, sub-section (*3*) of section 339 and section 448 which attract the punishment for fraud provided in section 447", the words and figures "offence covered under section 447" shall be substituted.

Amendment of section 223.

**18.** In section 223 of the principal Act, in sub-section (*4*), in clause (*a*), for the words "by the seal", the words "by the seal, if any," shall be substituted.

Amendment of section 419.

**19.** In section 419 of the principal Act, in sub-section (*4*), the words "or winding up" shall be omitted.

Amendment of section 435.

**20**. In section 435 of the principal Act, in sub-section (*1*),—

(*i*) for the words "trial of offences under this Act", the words "trial of offences punishable under this Act with imprisonment of two years or more" shall be substituted;

(*ii*) the following proviso shall be inserted, namely:—

"Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.".

Amendment of section 436.

**21.** In section 436 of the principal Act, in sub-section (*1*), in clause (*a*), for the words "all offences under this Act", the words, brackets and figures "all offences specified under sub-section (*1*) of section 435" shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

Companies Act, 2013 (Act) was notified on 29th August, 2013. Barring provisons relating to Chapters XV to XX and certain other provisions relating to setting up of/exercise of powers by National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT); Investor Education and Protection Fund (IEPF'); National Financial Reporting Authority (NFRA) and Special Court, all provisions of the Act have been brought into force with effect from 1st April, 2014.

After the commencement of provisions of the Act, Government have received representations from various stakeholders (including Industry Chambers, Professional Institutes, Legal Experts and Ministries/Departments) expressing practical difficulties in complying with some of the requirements laid down in the commenced provisions. It was noted that some of the issues raised and suggestions made can be addressed only by way of amendent in the Act and their immediate resolution is also considered to be necessary. Some of the amendments are also required with a view to further facilitate 'ease of doing business' and deal with certain difficulties in this behalf brought out by Industry Chambers and other agencies.

The proposed amendments deal with related party transactions, fraud reporting by auditors, public inspection of Board resolutions, responsibilities of audit committee, restrictions on bail, making common seal optional, requirement for minimum paid-up share capital, strength of benches for hearing winding up cases, jurisdiction of special courts to try offences.

Amendments are also being proposed in the Act to incorporate some of the provisions earlier left out inadvertently, setting off of past losses/depreciation before declaring dividend and exemptions for giving of loans/guarantee/security by holding companies to its subsidiaries.

Accordingly, it has been decided to move amendments in the Act through an Amendment Bill. The Bill, namely, the Companies (Amendment) Bill, 2014, *inter alia,* contains the amendments to the Companies Act, 2013 as under:—

(*i*) to amend clauses (*68*), (*71*) of section 2 and section 11 of the said Act to omit the requirement for minimum paid-up share capital, and consequential changes;

(*ii*) to amend sections 9, 12, 22, 46 and 223 of the said Act for making common seal optional, and consequential changes for authorisation for execution of documents;

(*iii*) to insert a new section 76A to provide for punishment for deposits accepted in violation of the provisions of the said Act;

(*iv*) to amend clause (*g*) of sub-section (*3*) of section 117 to prohibit public inspection of Board resolutions filed in the Registry;

(*v*) to amend sub-section (*1*) of section 123 of the said Act to include provisions for writing off past losses/depreciation before declaring dividend for the year;

(*vi*) to amend sub-section (*6*) of section 124 of the said Act for rectifying the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the Investors Education and Protection Fund even though subsequent dividend(s) has been claimed;

(*vii*) to amend sub-section (*3*) of section 134 and sub-section (*12*) of section 143 of the said Act to incorporate enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for the latter category also to be made in the Board's Report;

(*viii*) to amend clause (*iv*) of sub-section (*4*) of section 177 of the said Act to provide provision empowering Audit Committee to give omnibus approvals for related party transactions on annual basis;

(*ix*) to amend section 185 of the said Act to provide for exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries;

(*x*) to amend sub-section (*1*) of section 188 of the said Act for replacing 'special resolution' with 'resolution' for approval of related party transactions by non-related shareholders;

(*xi*) to amend sub-section (*1*) of section 188 of the said Act to exempt related party transactions between holding companies and wholly owned subsidiaries (WOS) from the requirement of approval of non-related shareholders';

(*xii*) to amend sub-section (*6*) of section 212 of the said Act to provide for bail restrictions to apply only for offence relating to fraud u/s 447;

(*xiii*) to amend sub-section (*4*) of section 419 of the said Act to provide for winding up cases to be heard by 2-member Bench instead of a 3-member Bench; and

(*xiv*) to amend sections 435 and 436 of the said Act to provide for that Special Courts to try only offences carrying imprisonment of two years or more.

The Bill seeks to achieve the above objectives.

NEW DELHI; ARUN JAITLEY.

*The* 8*th December,* 2014.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill, *inter alia*, proposes to substitute sub-section (*12*) of section 143 of the Companies Act, 2013 so as to confer power upon the Central Government to specify amount of fraud, beyond which the matter shall be reportable by the auditor to the Central Government and also in other cases the matter shall be reportable to the Audit Committee or to the Board. This clause also empowers the Central Government to specify the manner of reporting to the Central Government or the Audit Committee or Board as the case may be. Further, this clause also empowers the Central Government to specify the manner in which the details about such frauds are to be disclosed in the Board's report.

Clause 14 of the Bill, *inter alia*, proposes to insert a proviso in clause (*vi*) of sub-section (*4*) of section 177 of the Companies Act, 2013 so as to confer power upon the Central Government to specify such conditions with which the Audit Committee may make omnibus approval for related party transactions.

ANNEXURE

EXTRACTS FROM THE COMPANIES ACT, 2013

(18 OF 2013)

* * * * *

Definitions.

**2.** In this Act, unless the context otherwise requires,—

* * * * *

(*68*) "private company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(*i*) restricts the right to transfer its shares;

(*ii*) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(*A*) persons who are in the employment of the company; and

(*B*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(*iii*) prohibits any invitation to the public to subscribe for any securities of the company;

* * * * *

(*71*) "public company" means a company which—

* * * * *

(*b*) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

* * * * *

Effect of registration.

**9.** From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

* * * * *

Commencement of business, etc.

**11.** (*1*) A company having a share capital shall not commence any business or exercise any borrowing powers unless—

(*a*) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and

* * * * *

**12.** (*1*) * * * * * Registered office of company.

(*3*) Every company shall—

* * * * *

(*b*) have its name engraved in legible characters on its seal;

* * * *

**22.** (*1*) * * * * * Execution of bills of exchange, etc.

(*2*) A company may, by writing under its common seal, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside india.

(*3*) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

* * * * *

**46.** (*1*) A certificate, issued under the common seal of the company, specifying the shares held by any person, shall be *prima facie* evidence of the title of the person to such shares. Certificate of shares.

* * * * *

**117.** (*1*) * * * * * Resolutions and agreements to be filed.

(*3*) The provisions of this section shall apply to—

* * * * *

(*g*) resolutions passed in pursuance of sub-section (*3*) of section 179; and

* * * * *

## CHAPTER VIII

### DECLARATION AND PAYMENT OF DIVIDEND

**123.** (*1*) No dividend shall be declared or paid by a company for any financial year except— Declaration of dividend.

(*a*) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (*2*), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(*b*) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

* * * * *

Unpaid dividend account.

**124.** (*1*) * * * * *

(*6*) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (*5*) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a Statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

* * * * *

Financial statement, Board's report, etc.

**134.** (*1*) * * * * *

(*3*) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

* * * * *

Powers and duties of auditors and auditing standards.

**143.** (*1*) * * * * *

(*12*) Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

* * * * *

Audit Committee.

**177.** (*1*) * * * * *

(*4*) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia,* include,—

* * * * *

(*iv*) approval or any subsequent modification of transactions of the company with related parties;

* * * * *

Loan to directors, etc.

**185.** (*1*) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

* * * * *

Related party transactions.

**188.** (*1*) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

(*a*) sale, purchase or suply of any goods or materials;

(*b*) selling or otherwise disposing of, or buying, property of any kind;

(*c*) leasing of property of any kind;

(*d*) availing or rendering of any services;

(*e*) appointment of any agent for purchase or sale of goods, materials, services or property;

(*f*) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(*g*) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

*Explanation.*—In this sub-section,—

(*a*) the expression "office or place of profit" means any office or place—

(*i*) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(*ii*) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(*b*) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

* * * * *

(*3*) where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (*1*) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

* * * * *

**212.** (*1*) * * * * * Investigation into affairs of Company by Serious Fraud Investigation Office.

2 of 1974. (*6*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (*5*) and (*6*) of section 7, section 34, section 36, sub-section (*1*) of section 38, sub-section (*5*) of section 46, sub-section (*7*) of section 56, sub-section (*10*) of section 66, sub-section (*5*) of section 140, sub-section (*4*) of section 206,

section 213, section 229, sub-section (*1*) of section 251, sub-section (*3*) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(*i*) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(*ii*) where the Public Prosecutor opposes the application, the court is satisfied that there are resonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to in this sub-section except upon a complaint in writing made by—

(*i*) the Director, Serious Fraud Investigation Office; or

(*ii*) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

* * * * *

Inspector's report.

**223.** (*1*) * * * * *

(*4*) The report of any inspector appointed under this Chapter shall be authenticated either—

(*a*) by the seal of the company whose affairs have been investigated; or

* * * * *

Benches of Tribunal.

**419.** (*1*) * * * * *

(*4*) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.

* * * * *

## CHAPTER XXVIII

### SPECIAL COURTS

Establishment of Special Courts.

**435.** (*1*) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

* * * * *

Offences triable by Special Courts.

**436.** (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— 2 of 1974.

(*a*) all offences under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned:

* * * * *

ANOOP MISHRA,
*Secretary-General.*

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